

**IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF WEST VIRGINIA**

MOUNTAIN VALLEY PIPELINE, L.L.C., : Civil Action No. 2:17-cv-04214

Plaintiff, : Judge John T. Copenhaver, Jr.

vs. :

AN EASEMENT TO CONSTRUCT, :  
OPERATE AND MAINTAIN A 42-INCH :  
GAS TRANSMISSION LINE ACROSS :  
PROPERTIES IN THE COUNTIES OF :  
NICHOLAS, GREENBRIER, MONROE, :  
SUMMERS, BRAXTON, HARRISON, :  
LEWIS, WEBSTER, AND WETZEL, WEST :  
VIRGINIA, et al. :

Defendants. :

**PLAINTIFF MOUNTAIN VALLEY PIPELINE, L.L.C.'S  
MOTION TO STRIKE DEFENDANTS' MOTION TO DISMISS [DOC. NO. 78]**

Plaintiff Mountain Valley Pipeline, L.L.C. (“MVP”) moves to strike the motion to dismiss of Defendants Orus Ashby Berkley, Reinhard Bouman, Ashofteh Bouman, Tammy A. Capaldo, Robert M. Jarrell, Jeffrey Dewayne Osborne, Kiranasa Swami, Ronald Tobey, Elizabeth Tobey, and Allan Walter Lehr (collectively, “Moving Landowners”)<sup>1</sup>, Doc. No. 78, and states the following in support:

1. MVP filed this Complaint initiating a condemnation proceeding on October 24, 2017. *See* Doc. No. 1.

---

<sup>1</sup> Defendants Charles F. Chong, Rebecca Ann Eneix-Chong, Gerald Wayne Corder, Randall N. Corder, Hilry Gordon, William Gregory Lloyd, Brian Van Nostrand, and Helen Montague Van Nostrand also moved to dismiss, *see* Doc. No. 78, but these landowners have since been dismissed without prejudice from this condemnation action and are part of a separate condemnation proceeding in the United States District Court for the Northern District of West Virginia. *See Mountain Valley Pipeline, LLC v. An Easement to Construct, Operate and Maintain a 42-Inch Gas Transmission Line Across Properties in the Counties of Braxton, Lewis, Harrison, Webster, and Wetzel, West Virginia, et al.*, No. 1:17-cv-211-IMK.

2. On November 17, 2017, MVP and the Moving Landowners entered into a stipulation agreeing that all answers to the Complaint would be filed on December 4, 2017. *See Doc. No. 32.*

3. On December 4, 2017, the Moving Landowners filed a “Motion to Dismiss And, Subject Thereto, Defendants’ Answer, Objections, Affirmative Defenses, Demand for Just Compensation, and State Procedural Protections, and Demand for Jury Trial”. *See Doc. No. 78.*

4. The Motion to Dismiss seeks dismissal of the Complaint on the basis of lack of subject matter jurisdiction and that the Complaint fails to state a claim upon which relief can be granted. *See Doc. No. 78 at 1.*

5. The Motion to Dismiss must be stricken as improper under Federal Rule of Civil Procedure 71.1, which provides that except for an answer, “[n]o other pleading or motion asserting an additional objection or defense is allowed.” *See Fed. R. Civ. P. 71.1(e)(3).* Further, the substantive arguments raised in support of the Motion to Dismiss lack merit.

WHEREFORE, for the foregoing reasons and those set out more fully in the accompanying Memorandum of Law in Support of its Motion to Strike, MVP requests that the Court grant this motion to strike.

December 18, 2017

REED SMITH LLP

/s/ Nicolle R. Snyder Bagnell  
Nicolle R. Snyder Bagnell  
W.V. I.D. No. 11081  
Reed Smith Centre  
225 Fifth Avenue  
Pittsburgh, PA 15222  
(412) 288-3131  
nbagnell@reedsSmith.com

*Counsel for Plaintiff Mountain Valley Pipeline, L.L.C*

**CERTIFICATE OF SERVICE**

The undersigned hereby certifies that a true and correct copy of the foregoing has been served via the Court's ECF system on all counsel of record, and by U.S. First Class Mail upon the individuals identified on the attached Service List.

Dated: December 18, 2017

/s/ Nicolle R. Snyder Bagnell

**SERVICE LIST**

The undersigned hereby certifies that a true and correct copy of the foregoing has been served upon the following via U.S. First Class Mail:

Brian and Beth Armstrong 312 Ritchie Farm Road Summersville, WV 26651-4521	Ervin E. Richmond 136 Rockhill Dr. Alderson, WV 24910
Bruce A. and Kimberly Roberts PO Box 321 Nettie, WV 26681-0321	Gerald K. Richmond 941 Bun Fink Road Alderson, WV 24910
Virginia D. and Connie McClung 453 Power Plant Rd Summersville, WV 26651-2031	Carolyn S. Walls PO Box 82 Coal Mountain, WV 24823-0082
Artie Orlena Robinson and David Lane Robinson 5907 Ward Road Nettie, WV 26681-4563	Richard Dean Ward 124 Maryville MBL Alcoa, TN 37701
Estate of C. L. Keener 118 Dawson Road Meadow Bridge, WV 25976-9424	Ashby A. and Emma Jean Boone and Dorothy Marie Boone Fogle 34 Orchard Tree Drive Front Royal, VA 22630-5808
James Keener 38692 Adains Road Willoughby, OH 44094	Caitlyn A. Gragg PO Box 58 Alderson, WV 24910-0058
Johnnie Ray Keener, Brande Nicole Keener, and David Harmon 118 Dawson Road Meadow Bridge, WV 25976-9424	Wiseman Living Trust Gene and Phyllis M. Wiseman 7507 Walton Lane Annandale, VA 22003-2558
Clyde Fox, Michael Fox, Naomi J. Fox, and Robert W. Fox P. O. Box 646 Leslie, WV 25972-0646	Robert Jackson Holt 1611 Smith Bridge Road Chadds Ford, PA 19317-9765
Naomi J. and Robert W. Fox 386 Clifftop Loop Road Danese, WV 25831-7273	Philip J. Harrah 78 Starling Lane Sandstone, WV 25985-9419
Silas Steven and Laurel Tucker 5354 Forest Brook Drive Milton, FL 32583-6224	Anthony D. Richmond 329 Rock Hill Drive Alderson, WV 24910-7143

David R. Hughes 232 Cedar Ridge Farm Road Greenville, WV 24945-0067	Thomas E. and Rosetta B. Toney and Austin B. Toney 48 Sun View Dr. Peterstown, WV 24963-5015
Doreen S. Allen, Fredereck M. Osborne, Jo Lynn Blankenship, Mickey D. Osborne, and Scott S. Osborne 377 Dark Hollow Rd Rainelle, WV 25962-9713	Connie Harper P.O. Box 2234 Beckley, WV 25802-2234
The Paulette A. Sears Family Trust 222 Navajo Street Tavernier, FL 33070-2119	Melissa A. Leslie 304 Miller Ave Hinton, WV 25951
Heirs of J.H. Harrah P. O. Box 161 Meadow Bridge, WV 25976-0161	Quinwood Coal Company f/k/a Alex Energy, LLC f/k/a Alex Energy, Inc. f/k/a Green Valley Coal Company, LLC 1415 Louisiana Street Suite 2400 Houston, TX 77002-7361
Estate of Dannie Lee Spence Danny Spence, Jr. PO Box 292 Peterstown, WV 24963-0292	

Dated: December 18, 2017

/s/ Nicolle R. Snyder Bagnell